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No. 82-342

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

PHILKO AVIATION, INC.,

Petitioner,

vs.

MAURICE SHACKET and SYLVIA SHACKET,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

JOINT APPENDIX

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TABLE OF CONTENTS

	Page
Judgment in Question	2
Chronological List of Relevant Docket Entries	3
Excerpt from Deposition of Richard M. Andrews, Vice President of Sandwich State Bank	6

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JUDGMENT IN QUESTION

The following opinions, decisions, judgments and orders have been omitted in printing this appendix because they appear on the following pages in the appendix to the printed Petition for Certiorari:

Declaratory Judgment Order of the United States District Court for the Northern District of Illinois dated February 6, 1981—Pet. App. B (pp. 14a-16a).

Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois dated September 22, 1980—Pet. App. C (pp. 17a-34a).

Memorandum Opinion and Order of the United States District Court for the Northern District of Illinois dated January 19, 1981—Pet. App. D (pp. 35a-40a).

Opinion of the United States Court of Appeals for the Seventh Circuit dated January 22, 1982—Pet. App. A (pp. 1a-13a).

CHRONOLOGICAL LIST OF REVELANT DOCKET ENTRIES

Relevant Docket Entries In The United States District Court For The Northern District Of Illinois

Date	*Docket Entry*

October 31, 1978—Complaint of Maurice and Sylvia Shacket.

November 27, 1978—Answer and Counterclaim of Philko Aviation, Inc.

December 19, 1978—Amended Complaint of Maurice and Sylvia Shacket.

January 17, 1979—Answer and Counterclaim of Sandwich State Bank.

April 5, 1979—Answers of Maurice and Sylvia Shacket to Defendant Philko Aviation's First Set of Interrogatories.

April 26, 1979—Order entered April 25, 1979 adjudging Roger Smith and Roger Smith Aircraft Sales in default for failure to answer or otherwise plead.

April 30, 1979—Answers of Sandwich State Bank to Plaintiffs' First Set of Interrogatories.

May 24, 1979—Answers of Philko Aviation to Plaintiffs' First Set of Interrogatories.

December 29, 1979—Plaintiff-Counterdefendant's Motion for Summary Judgment.

March 26, 1980—Defendant Philko Aviation's Response to Motion for Summary Judgment and Crossmotion for Summary Judgment against Plaintiffs; and Defendant Edward J. McArdle's Motion for Summary Judgment on Count II of Plaintiffs' Complaint.

Date	*Docket Entry*

September 23, 1980—Memorandum Opinion and Order entered September 22, 1980 (a) granting summary judgment in favor of Plaintiffs Maurice and Sylvia Shacket on Count I of the Amended Complaint and entering summary judgment in favor of Plaintiffs on the Counterclaim of Philko Aviation, Inc. and The Sandwich State Bank; (b) Denying Philko's Crossmotion for Summary Judgment; and (c) granting Edward J. McArdle's Motion for Summary Judgment on Count II of Plaintiffs' Complaint.

October 3, 1980—Judgment Order entered October 2, 1980 in accordance with Memorandum Opinion and Order of September 22, 1980.

December 9, 1980—Plaintiffs' Motion for Summary Judgment against Roger Smith and Roger Smith Aircraft Sales, Inc.

December 11, 1980—Defendant Philko Aviation Inc.'s Motion to Modify Judgment Order pursuant to Section 60(b).

December 18, 1980—Default Judgment Order entered in favor of Plaintiffs and against Roger Smith and Roger Smith Aircraft Sales, Inc.

January 16, 1981—Order entered January 16, 1981 extending time for filing Notice of Appeal 20 days beyond date fixed.

January 20, 1981—Memorandum Opinion and Order entered January 19, 1981 denying Defendant Philko Aviation's Motion to Modify Judgment Order in all principal effects, making limited modifications.

February 6, 1981—Final Declaratory Judgment Order entered January 30, 1981.

February 17, 1981—Defendant Philko Aviation's Notice of Appeal to the Seventh Circuit Court of Appeals.

Relevant Docket Entries In The United States Court Of Appeals For The Seventh Circuit

Date	*Docket Entry*

March 16, 1981—Order granting Motion to include depositions and Philko's Section 60(b) Motion as part of Record on Appeal.

June 22, 1981—Judgment Order and Opinion.

July 26, 1981—Amended Motion for Stay of Mandate.

August 25, 1981—Order Granting Motion for Stay of Mandate.

September 7, 1981—Notice of Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

EXCERPT FROM DEPOSITION

DEPOSITION OF RICHARD M. ANDREWS,
VICE PRESIDENT, SANDWICH STATE BANK

Direct Examination

* * *

By Mr. Dore: [Attorney for Philko Aviation, Inc.]

[78][1] * * * Q. You referred to a term "chain of title".

A. Yes.

Q. Mr. Andrews, based on your experience from [79] 1974 through the current date, what do you understand to be the chain of title?

A. Chain of title, in my mind, would be the proper bills of sale originating from the record owner of the aircraft to and including the ultimate purchaser. And along with those bills of sale, any release of lien which may be required as indicated on any title search.

Q. There are, as I understand your testimony, separate methods of your undertaking. One is where an aircraft is titled already, is that correct?

A. Correct.

Q. Explain to me what your procedures would be where the aircraft is titled currently.

A. Okay. If the airplane is titled currently as reflected by a title search, the title search would indicate not only the make, model, and serial number of the aircraft, but also the present record owner of the aircraft and any liens of record.

Also on a title search, it would indicate the previous owner of the aircraft—do you want this information, John?

Q. Yes, I do.

A. Everything? Okay. The type of ownership that [80] the airplane is currently registered in such as individual co-owner, partnership or corporation.

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[1] Numbers in brackets signify the page of the deposition transcript where the material appearing below the number can be located.

Q. Okay. Where do you get this information from?

A. From a title search firm in Oklahoma City.

Q. Is it your procedure each time you would—in the bank against the purchase of an aircraft lien by a customer, is it your procedure that a title search would be made?

A. That's correct.

Q. Is it your procedure that the title search would be made prior to the issuance of any loan proceeds?

A. Very definitely.

Q. Okay. The title search that is conducted by an agency, from what records—from what organizations do they obtain the information for the title search?

MR. COOK: If you know.

THE WITNESS: They get the information from the files of the Federal Aviation Administration.

By Mr. Dore:

Q. Is there any other place to obtain the information that you would get on a title report?

A. The FAA is the only source of this information, [81] to my knowledge.

Q. Would it be fair to say that the FAA has a central registry for aircraft in the United States?

MR. MURRAY: Objection.

MR. DORE: You can answer.

THE WITNESS: I would say yes.

By Mr. Dore:

Q. How do you know that?

A. Through my knowledge of aircraft financing and aircraft recordation as well as briefs of court cases which I have read.

Q. The recordation, the knowledge by reading court cases, was this present—did you have this knowledge at the time the moneys were advanced for the purchase of aircraft 78 MS?

A. This is correct.

Q. Now, as I understand your statement, aircraft 78 MS when purchased by Philko Aviation was not a titled aircraft?

A. That is correct. The title search on 78 MS indicates aircraft was in an unregistered status.

Q. Was some information or some data on the record with the Federal Aviation Administration that the manufacturer was Piper Aviation, is that correct?

[82] A. Piper Manufacturing.

Q. What else was indicated on those records?

A. That a copy of a bill of sale to North States Aviation had been submitted but not recorded.

Q. Why was that?

A. Why was it submitted?

Q. Why was it not recorded?

MR. MURRAY: Objection.

THE WITNESS: I believe it was a copy for information purposes only.

By Mr. Dore:

Q. I see. Did you obtain this information prior to the time that Sandwich State Bank issued the check for $152,000?

A. Yes.

Q. Okay. Using this information, did you use that data or that information received from the Federal Aviation Administration records as a basis for making this loan?

A. That's correct.

Q. What additional items did you obtain from Roger Smith in order for Sandwich State Bank to make this loan?

A. I received from Roger Smith a bill of sale, [83] an original. I want to stress the term "original" here. This is important to me as a lender, that it's an original bill of sale because the FAA will not accept documents which are not signed in ink. They will not accept copies.

I received an original bill of sale from Piper Manufacturing to North States Aviation; a bill of sale from North States Aviation to Clark Aviation; a bill of sale from Clark Aviation to Roger Smith Aircraft Sales, Inc.; and a bill of sale from Roger Smith Aircraft Sales, Inc. to Philko Aviation, Inc.

Q. Who asked you or directed you to make the check payable to Clark Aviation?

A. Roger Smith.

Q. Did he explain to you why it was necessary to have a check for a $152,000 made payable to Clark Aviation?

A. Roger indicated that he was acting as a broker in completing the transaction to Philko Aviation, Inc.; and that in order to complete payment of the aircraft, it had to be made payable to Clark Aviation, Inc.

Q. So that there was an obligation or an amount still owed Clark Aviation, is that what you are saying?

[84] MR. MURRAY: Objection, objection.

THE WITNESS: That's what he indicated to me.

By Mr. Dore:

Q. When Roger Smith appeared at the Sandwich State Bank, I believe on April 21—or was it April 22? Would you tell me which?

A. I don't know if Roger Smith appeared.

Q. All right. Who did you get the bills of sale from?

A. Either Roger Smith or an agent or runner for Roger Smith.

Q. Okay. Go ahead.

A. I received the bills of sale completing, what I thought to be, the chain or [sic] title of the airplane as well as the loan documentation of Philko Aviation, Inc., at the same time. And this was on April 22, 1978.

Q. The loan documentation you are referring to, that was the securing of the loan from Sandwich State Bank by Philko Aviation, is that correct?

A. That is correct.

Q. For the loan of $152,000?

A. That is correct.

Q. And this loan documentation was executed by Mr. McArdle, is that correct?

[85] A. That's correct, as president of Philko Aviation.

Q. Would you have issued the loan for $152,000 without that document, Mr. Anderson?

MR. COOK: Andrews.

MR. DORE: I'm sorry, Mr. Andrews.

THE WITNESS: No, I would not.

By Mr. Dore:

Q. Mr. Andrews, in your experience, is it an unusual practice to have Sandwich State Bank issue moneys against title documents for aircraft?

MR. COOK: Excuse me a second. Can you—

MR. MURRAY: Have her read the witness back the question again.

(The question was read.)

MR. COOK: Can you clarify that as to before or after their file for recording.

MR. MURRAY: Do you understand the question?

MR. COOK: I'm concerned about the time frame that he's talking about.

THE WITNESS: Let me see if I understand. Do you mean, if I have in my hand title documents, would I issue loan proceeds?

[86] By Mr. Dore:

Q. That's correct.

A. Yes, I would.

Q. That's right. And you have done this in the past?

A. Yes.

Q. All right. Do you do that currently?

A. Yes.

Q. You had done this prior to the time of the issuance of the check for $152,000, this practice?

A. Yes, yes.

Q. Was it the practice of Sandwich State Bank to go out and physically look at the aircraft prior to the time that the loan would be issued?

A. No.

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